

Panaji, 20th November, 2003 (Kartika 29, 1925)

SERIES II No. 34

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour.

Order

No. 28/7/2001-LAB

The following Award dated 30-3-2002 in reference No. IT/55/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Angela Menezes, Joint Secretary (Labour).

Panaji, 3rd May, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/55/98.

Shri Umesh Talwankar,
B. No. 6518,
R/o Devsu Korgao,
Pernem - Goa.

... Workman/Party I

V/s

M/s. Kadamba Suburban Transport
Corporation Limited,
Bus Terminus,
Panaji - Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Kundaikar.

Employer/Party II - Represented by Adv. Shri A. Palekar.

Panaji, dated: 30-03-2002.

AWARD

In exercise of the powers conferred under sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 2nd July, 1998 bearing No. IRM/CON/(3)/97/9486 referred the following dispute for adjudication by this Tribunal.

"Whether the action of of M/s. Kadamba Suburban Transport Corporation Limited, Panaji-Goa, in dismissing Shri Umesh Talwankar, Conductor, from services with effect from 7-10-96, is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/55/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was appointed as a conductor by the Employer-Party II (for short, "Employer") w.e.f. 15-6-92. That on 4-5-95 when he was on route Sinqerim-Bicholim-Mapusa on Vehicle No. GDX-1 the line checking staff intercepted the said bus at Asnoda at 18.50 hrs. and he was issued default notice

dated 4-5-95. That after the said default notice was issued he approached Shri Shetgaonkar and pointed out to him the discrepancy in the said default notice. That thereafter the workman found that the figure Rs. 28/- in the default notice was overwritten and in its place Rs. 28.75 was written. That the workman replied to the said default notice on 26-5-95 denying the charge made against him. That on 3-6-95 a chargesheet was issued to the workman stating that he had committed misconduct under clause 28 of the Certified Standing Orders. That an enquiry was conducted into the said chargesheet and on completion of the enquiry the Inquiry Officer submitted his report and on the basis of the said report, the employer vide order dated 7-10-96 dismissed the workman from service. The workman contended that the enquiry conducted against him was not fair and proper and the charges were not proved against him in the enquiry. The workman contended that the findings given by the Inquiry Officer are perverse as they are contrary to the evidence on record. The workman contended that the order of dismissal passed against him by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages. The employer filed written statement at Exb. 4. The employer admitted that the workman was appointed as trainee conductor w.e.f. 15-6-92 and subsequently he was appointed as conductor on temporary basis. The employer denied that the workman approached Mr. Shetgaonkar on 5-5-95 or that Shri Shetgaonkar made any unauthorised alterations in the default notice. The employer denied that the enquiry conducted against the workman was not fair and proper or that no charges were proved against the workman in the enquiry. The employer denied that the order of dismissal passed against the workman is illegal and unjustified or that the workman is entitled to any relief as claimed by him. Thereafter the workman filed a rejoinder at Exb. 6.

3. On the pleadings of the parties, issues were framed at Exb. 7 and subsequently the evidence of the workman was recorded on preliminary issues. When the case was fixed for the evidence of the employer on preliminary issues the parties submitted that the dispute between them was likely to be settled and at the request of the parties the case was fixed on 20-2-2002 at 10.30 a. m. for filing the terms of the settlement. On this date, both the parties appeared and submitted that the dispute between the workman and the employer was amicably settled and they filed the terms of settlement dated 20-2-2002 at Exb. 9. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 20-2-2002 at Exb.9.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be reinstated in the Corporation as Conductor at initial basic pay of Rs. 3050/- in the pay scale of Rs. 3050-75-3950-80-4590. However, the Party I will not be entitled for any benefits of arrears/difference in wages from the date of dismissal to the date of joining.
2. It is agreed between the parties that the absence from the date of dismissal i.e. 7-10-1996 till date of joining will be treated as on leave without pay and hence he will not be entitled for any consequential benefits.
3. It is agreed by the Workman/Party I that the claim raised in the above reference shall stand conclusively settled and have no claim or any monetary benefits which can be computed in monetary terms.
4. It is agreed by the parties that the claim raised by the workman in the reference stands conclusively settled.
5. It is agreed by the Workman/Party I that he will fully co-operate with the Employer/Party II in maintaining the discipline and smooth functioning of the Kadamba Transport Corporation Limited and shall co-operate fully in bringing the Corporation on sound footings.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 30-3-2002 in reference No. IT/7/2001 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Angela Menezes, Joint Secretary (Labour).

Panaji, 3rd May, 2002.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/7/2001.

Shri Dilip Nanodkar,
C/o Lakaki Dry Cleaners & Art Dyers,
Margao - Goa. Workmen/Party I

V/s

M/s. Lakaki Dry Cleaners and
Art Dyers,
Near Municipality,
Margao - Goa. ... Employer/Party II

Workmen/Party I - Represented by Adv. Shri S. K.
Mandrekar.

Employer/Party II - Represented by Shri K. V. Nadkarni.

Panaji, dated : 30-3-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2nd January, 2001, bearing No. IRM/CON/SG/(31)2000/150 referred the following dispute for adjudication of this Tribunal.

"(I) Whether the following demands of the workmen of M/s. Lakaki Dry Cleaners and Art Dyers, Margao, Goa to be effective from 1-1-2000, are justified ?

DEMANDS

Demand No. 1 :- Appointment Letters :

All the workmen be issued with letters of appointment specifying their date of joining the services.

Demand No. 2 :- Permanency :

The workmen who have completed 240 days of service in a given year be declared permanent and a letter be issued to testify the fact.

Demand No. 3 :- Scales of pay :

(1) Manager
Rs. 2500-60-2800-85-3225-110-
3775-135-4450-160-5250-185-
6175-210-7225.

(2) In-Charge/Cashier
Rs. 2300-60-2600-85-3025-110-
3575-135-4250-160-5050-185-
5975-210-7025.

(3) Counter Clerk
Rs. 2100-60-2400-85-2825-110-
3375-135-4050-160-4850-185-
5775-210-6825.

(4) Machine Operator/Driver
Rs. 2000-50-2225-75-2600-100-
3100-125-3725-150-4475-175-
5350-200-6350.

(5) Washerman/Pressman.
Rs. 1900-50-1150-75-1525-100-
2025-125-2650-150-3400-175-
4275-200-5275.

(6) Helper.
Rs. 1700-50-1950-75-2325-100-
2875-125-3500-150-4250-175-
5125-200-6125.

Demand No. 4 :- Dearness Allowance :

The workmen be admissible to Dearness Allowance at the rate of 75 percent of the basic salary with Consumer Price Index Number in 1982 as base at 100 points.

Demand No. 5 :- Variable Dearness Allowance :

For every rate in Consumer Price Index Numbers the workmen be made entitled to receive additional variable dearness allowance at the rate of Rs. 8/- for every rise of 10 points.

Demand No. 6 :- Fitment :

All the workmen be fitted into respective scales of pay according to number of years of service rendered by them for the purpose of determining basic pay of each workman.

Demand No. 7 :- House Rent Allowance :

The workmen be made admissible to house rent allowance at the rate of 15 per cent of the basic salary.

Demand No. 8 :- City Compensatory Allowance :

The workmen be made admissible to city compensatory allowance at the rate 15 per cent of the basic salary.

Demand No. 9 :- Bonus :

The workmen be made admissible to Bonus at 20 per cent per year.

Demand No. 10 :- Officiating Allowance:

The workmen who undertake the work of absentee workman be made admissible to receive the wages payable to absentee workman in addition to wages earned by him for the work rendered by him in his category.

Demand No. 11 :- Leave with Wages:

The workmen shall be made eligible the following leave in a year:

Earned Leave	—	30 days
Sick Leave	—	15 days
Casual Leave	—	12 days

Demand No. 12 :- Holidays:

Besides national and public holidays, the workmen be made eligible to paid-holidays on Holi day and two Idds in a year.

Demand No. 13 :- Incentive Allowance:

The workmen be made admissible to 10 per cent of the cash income of the company in a year to be distributed among the workmen equally.

Demand No. 14 :- Piece Rate:

Each pressman will press 40 shirts, 30 pants, 18 coats, 18 sarees as his quota of work for a day and in case of Bhatti clothes, the daily quota will be 100 pieces.

For additional pieces, the Pressman may be paid additional wages at the following rate:

Shirt Re. 1/-, Pant Rs. 2/-, Saree Rs. 5/-, Coat Rs. 10/-.

For additional pieces over and above 100 bhatti pieces, additional wages at the rate of Re. 1/- per piece be paid.

Demand No. 15 :- Permanency of Mr. Castel Mascarenhas:

Mr. Castel Mascarenhas who is rendering work as Machine Operator be designated as permanent Machine Operator entitling him to the corresponding scale of pay.

Demand No. 16 :- Overtime Wages:

The workman working in excess of his official hours of work be paid double wages for the extra work.

Demand No. 17 :- Transport Wages:

The workman deputed at a place other than place of his posting be made eligible to transport allowance at the rate of Rs. 100/- per day.

Demand No. 18 :- Tea Allowance:

The workmen be made eligible to receive Rs. 10/- per day for two teas, one in the morning and the other in the evening.

Demand No. 19 :- Loan:

The workmen be made eligible to receive loan free of interest once every year at the rate of five times his basic salary, the minimum being Rs. 5000/-. The loan will be repaid in twelve equal monthly instalments.

Demand No. 20 :- Bus Allowance:

The workmen made to work at the new place of factory be paid Rs. 200/- per month towards bus allowance.

Demand No. 21 :- Outdoor Service Allowance:

The workman, if deputed for outside service, be made eligible for outdoor service allowance of Rs. 30/- for full day and Rs. 20/- for half day.

Demand No. 22 :- Working Hours:

Factory Workers - 9 am to 1 pm
and
2 pm to 6 pm

Showroom Workers - 9 am to 1 pm
and
3.30 pm to
7.30 pm

Demand No. 23 :- Payment of Difference in Wages:

The difference in wages under this Charter of Demands be paid to workmen in one instalment within a month from the date of the agreement.

Demand No. 24 :- Operation of Agreement:

The Agreement be made effective/operative with effect from 1st January, 2000.

(2) If so, to what relief the workmen are entitled under separate heads of demands ?"

2. On receipt of the reference a case was registered under No. IT/7/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen-Party I (for short, "Workmen") filed statement

of claim at Exb. 5 in support of their demands raised against Employer-Party II (for short, "Employer"). The workmen stated that the employer earns a huge profit each year and pays bonus to its employees and despite of this the employer does not pay reasonable wages to its workmen. The workmen stated that the demands reised by them are legal and justified and their demands be granted w.e.f. 1-1-2000.

3. The employer filed written statement at Exb. 6 denying the claim of the workmen. The employer stated that the wages and other benefits paid to its workers are far better compared to other establishment in the same category in the region. The employer stated that the statements made by the workmen in the claim statement are vague in nature and they are based on financial and economic situation. The employer stated that the workmen have not justified the demands made by them against the employer. The workmen thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was fixed for recording the evidence of the workmen. Before the evidence of the workmen was recorded, the parties submitted that the dispute between them is likely to be settled and at the request of the parties the case was fixed for filing terms of settlement on 18-3-2002 at 10.30 a.m. Accordingly Shri Dilip Nanodkar, the representing of the workmen appeared along with Adv. Shri S. K. Mandrekar and Shri K. V. Nadkarni on behalf of the employer. Both the parties submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 9th March, 2002 duly signed before the Notary Shri A. V. Prabhu Dessai, Margao, Goa. The employer as well as the workmen also filed an application at Exb. 12 praying that consent award be passed in terms of the settlement dated 9th March, 2002. I have gone through the terms of the settlement which are duly signed by the parties. The said settlement has been duly signed before the notary Shri A. V. Prabhu Dessai of Margao, Goa. I have gone through the terms of settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 9th March, 2002.

ORDER

1. It is agreed by and between the parties namely the Management of Lakaki Dry Cleaners and Art Dyers and their workmen employed at their show room at Vasco-da - Gama, Margao Show room, Panjim Show Room and Factory at Dicarpale, Salcete, Goa as under:

a) **Demand No. 1 and 2 :**

Management has informed that these two particular demands have been settled long back. Hence the workers agreed to drop the said two demands.

b) **Demand No. 3: Scale of pay:**

Management informed that they had revised the pay scale in the last settlement which are far better than the pay scales of even large scale undertakings in Goa. Hence the workers agreed not to press the said demand and hence the same is treated as dropped for the time being.

c) **Demand No. 4: Dearness allowance:**

Management has agreed to increase the existing fixed dearness allowance by Rs. 150.00 from Rs. 325.00 to Rs. 475.00 per month to all employees on the permanent roll of the establishment.

d) **Demand No. 6: Fitment:**

That the Management in terms of the proposal put forth by the Dy. Labour Commissioner, Panjim-Goa, during the conciliation proceedings held on 22-9-2000 agreed to grant a Flat Rise of Rs. 150.00 (Rupees one hundred and fifty only) to all the workmen of their Showroom at Vasco da Gama, Showroom at Panjim, Showroom at Margao, and factory at Dicarpale, Salcete, Goa, and all the workmen of all the above named Showrooms and at factory have agreed to accept the same.

- e) That the flat-rise of Rs. 150.00 will be added in the existing basic salary and the concerned workmen will be fitted in the existing pay scale. Any difference in the fitment in the existing pay scale will be treated as personal pay.

f) **Demand No. 9: Bonus:**

That the Management agrees that they will pay and workmen agree to accept the bonus for the respective financial years 2000-01 onwards as per financial results of the firm for a particular year and as declared by the Management for the respective financial year.

g) **Demand No. 11: Leave with wages:**

Management informed that they are today granting to their employees 37 days leave with wages per year which is composed of 20 days privilege leave, 10 days casual leave and 7 days sick leave. Thus leave facility granted is far in excess of leave granted by many a big industrial units in the state. Therefore, workers agreed not to press this demand and hence the same is treated as dropped.

h) **Demand No. 15: Permanency of Mr. Castel Mascarenhas:**

Management informed the workers that issue of Mr. Castel Mascarenhas does not survive as he has been already placed in the second highest grade, Grade - II in which grade the other Machine Operator is presently placed. Hence the workers agreed to drop this demand as already settled.

i) **Demand No. 22: Working Hours:**

Management informed that they have already accepted the request of the workers and they are already following the same timings as suggested by the workers. Hence the demand is treated as settled.

j) **Demand No. 16: Overtime Wages:**

Management informed the workers that they are not engaging anybody for overtime work. Hence the demand is treated as dropped.

k) **Demand No. 18: Tea Allowance:**

Management stated that they are supplying tea both in the morning and afternoon free. Hence the demand is treated as settled.

l) It is agreed between the parties that other demands namely Demands No. 5, 7, 8, 10, 12, 13, 14, 17, 19, 20, 21 are presently not pressed and the same are considered as settled.

m) It is agreed between the parties that the existing facilities shall continue to remain in force till they are specifically altered or changed by an agreement.

n) Management has agreed that the arrears arising out of this settlement will be paid on or before 30th March, 2002. It is agreed between the parties that this settlement shall remain in force for a period of three years from 1-1-2002. However, benefits as agreed hereinabove shall be effective from 1-1-2000.

o) It is also agreed by the parties that in case of any legislation by the State or by the Central Government or the rules framed by any other appropriate authority, the workmen will be entitled only to the totality of the benefits under this settlement or of the legislation or the rules promulgated by any other Authority whichever is higher.

p) The workmen agree that as their demands which have been settled have caused considerable financial burden on the Management and as such the workmen agree not to raise or pursue directly or indirectly any demands involving any additional financial burden or liability on the Employer during the period of this settlement.

p) The workmen further agree that in the interest and progress of the establishment, which is

comparatively as small scale establishment, they will be extending whole hearted and full co-operation in every respect to the management in improving the existing systems and procedure and to introduce new systems or methods which will help the Management to eliminate waste and to have efficient working of the establishment, and its business to increase productivity, efficiency and profitability of the establishment in every way.

q) The workmen also agree that they shall maintain discipline in the establishment at all times by diligently observing the rules, regulations of the establishment as is in force from time to time and strictly follow decent approach with customers, as the establishment is customer oriented establishment.

r) The workmen further agree that they shall not resort to any direct action to settle any dispute or difference with the Management and that they shall try to settle all disputes or differences by mutual discussions with the management and in case of failure to settle mutually, to have recourse to the machinery under Industrial Disputes Act, 1947 for settlement of industrial disputes.

s) It is agreed between the parties that benefits under this settlement shall also be available to those employees who have retired during the pendency of this settlement.

2. Both parties agree that they shall jointly file necessary application before the Hon'ble Industrial Tribunal, at Panjim-Goa for an consent Award, in terms of this settlement. It is also further agreed between the parties that benefits under this settlement will be available to the workmen only after the Award of the Hon'ble Tribunal in reference No. IT/7/2000.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 26-3-2002 in reference No. IT/50/2001 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Angela Menezes, Joint Secretary (Labour).

Panaji, 3rd May, 2002.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/2001

Shri Haresh G. Kaulekar,
Dongri, Mandur,
Dhakte Bhat,
Post Neura, Goa.

Workman/Party I

V/s

M/s. Premier Builders,
Unitech City Centre,
Panaji - Goa.

Employer/Party II

Workman/Party I - Represented by Adv. Shri P. J. Kamat.

Employer/Party II - Ex-Parte.

Panaji, dated: 26-3-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub. section (1) of Section 10 of the Industrial disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 21st August, 2001, bearing No. IRM/CON/(93)/2000/3747 referred the following dispute for adjudication of this Tribunal.

(1) "Whether the action of the management of M/s. Premier Builders, Panaji-Goa, in refusing employment to Shri Haresh G. Kaulekar, with effect from 3-7-2000, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/50/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workman-Party I (for short, "Workman") appeared and filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") as a Peon with effect from 17-10-88 and he worked with the employer continuously till the date of termination of his service from 3-7-2000. That on 3-7-2000 he reported for work in the morning section and signed the attendance record as per the practice and that when he report for work after lunch the employer refused employment to him. That on 4-7-2000 he went to report for work but the employer did not allow him to do so. That at the time of termination

of his service the employer was employing about 13 employees and was carrying out the work of construction of buildings, flats etc. That prior to the termination of service the employer was employing more than 20 workers and the workman was enrolled under the Employees Provident Fund and Misc. Provisions Act, 1952 and he was contributing towards the Provident Fund. That at the time of termination of service the employer did not issue to him any termination letter nor he was given one month's notice nor was paid wages in lieu of notice nor was paid retrenchment compensation nor his wages of June 2000. That he visited the office of the employer on several occasions demanding service but the employer did not reinstate him and hence by letter dated 12-9-2000 he raised the dispute before the Commissioner, Labour, Panaji regarding his illegal termination of service by the employer. That conciliation proceedings were held by the Asst. Labour Commissioner and the employer filed reply dated 12-10-2000 before the conciliation officer admitting termination of service of the workman and stated that they did not intend to keep him in their employment any more. That since there was no settlement of dispute, a failure was recorded and the reference of the dispute was made to this Tribunal for adjudication. The workman contended that termination of his service amounted to retrenchment u/s 2 (00) of the Act and since the employer did not comply with Sec. 25f of the said Act, termination of his service is bad, illegal and unjustified. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. Though the employer was duly served with the registered A/D notice in the present case, the employer did not put in appearance and consequently no written statement was filed on behalf of the employer. Since inspite of the opportunity given the employer did not appear and participate in the proceedings the case was ordered to be proceeded ex-parte against the employer on 29-10-2001 and subsequently ex-parte evidence of the employer was recorded.

4. In support of his case the workman examined himself. He stated that he was working with the employer as a peon from 17-10-88. He produced his letter of appointment at Exb. W-1. He stated that he used to sign the muster roll. He stated that on 3-7-2000 he worked in the morning session and when reported for work after lunch, he was told by the Manager cum Administrative Officer, Dorothy Rebello that he will not be allowed to work and that he should go home. He stated that he reported for work on 4-7-2000 but he was not allowed to sign the muster roll. He stated that at the time when his services were terminated he was not given any notice, nor was paid notice pay nor retrenchment compensation. He stated that he approached the Manager and requested that he should be taken back in service but the manager refused to do so. He produced the letter dated 12-9-2000 at Exb.

W-2 whereby he raised the dispute before the Labour Commissioner regarding illegal termination of his service. He produced the reply dated 12-10-2000 at Exb. W-3 filed by the employer in the conciliation proceedings and stated that in the said reply the employer admitted that he was employed with them and that his services were terminated. He stated that the conciliation ended in failure and he produced the failure report dated 11-5-2001 at Exb. W-4. He stated that since termination of his service is illegal he is entitled to reinstatement in service with full back wages.

5. As mentioned earlier the case has proceeded ex-parte against the employer as inspite of being served with the notice the employer did not appear and consequently the evidence of the workman has gone unchallenged. The appointment letter Exb. W-1 proves that the workman was appointed as Peon by the employer w.e.f. 17-10-88. The workman has produced the reply dated 12-10-2000 Exb. W-3 filed by the employer before the Conciliation Officer. This reply is in response to the complaint dated 12-9-2000 made by the workman to the Labour Commissioner, Panaji. In this reply the employer has admitted that the workman was in their employment and that his services were terminated. In the reply the employer did not deny that the workman was employed as a peon nor denied that his services were terminated from 3-7-2000. Therefore the employment of the workman with the employer as a peon and termination of his services with effect from 3-7-2000 is proved.

6. It is the case of the workman that before termination of his service the employer did not give to him notice, nor paid to him one month's wages in lieu of notice nor paid to him retrenchment compensation. The question of paying notice pay or retrenchment compensation comes only when termination of service amounts to "retrenchment". Sec.2 (oo) of the Industrial Disputes Act, 1947 defines retrenchment as follows:

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation in the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health"

7. The case of the workman does not fall within any of the exceptions laid down in Sec. 2 (oo) of the Industrial Disputes Act, 1947. The workman has produced the reply dated 12-10-2000 Exb. W-3 filed by the employer in the conciliation proceedings. In the said reply the employer has stated that the workman always displayed a disobedient behaviour; he was arrogant, non punctual, frequently remaining absent, leave the office earlier without intimation, invariably waste his time idling at some other office, shops, or engage in conversation with people he meets on the roadside; very often remained absent without prior intimation and than produced bogus certificate from a medical practitioner. The employer stated that because of his above behaviour they do not wish to keep the workman in employment as he will spoil the working environment and set a bad example for the other co-workers presently in their employment. The above allegations made against the workman constituted acts of misconduct. It is thus clear from the above reply of the employer that the services of the workman were terminated by the employer because according to the employer the workman had committed various acts of misconduct. Therefore the termination of service of the workman by the employer was a matter of punishment inflicted by way of disciplinary action. Hence termination of service of the workman does not amount to retrenchment as defined under Sec. 2(oo) of the Industrial Disputes Act, 1947. This being the case the question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 did not arise. However since the services of the workman were terminated because of misconducts committed by him, as per the settled law, the employer ought to have issued a chargesheet to him, thereafter conducted an enquiry and than if the misconduct is proved terminate the services of the workman. In the present case there is no evidence to show that any chargesheet was issued to the workman and domestic enquiry was conducted against him. The employer had the opportunity to prove misconduct against the workman before this Tribunal. However, the employer did not avail of this opportunity. In spite of being served with the notice in the present case the employer did not participate in the proceedings and allowed the case to proceed ex-parte against them. Thus the employer has failed to prove misconduct against the workman before this Tribunal also. Therefore the termination of service of the workman becomes illegal and unjustified. I, therefore hold that the action of the employer in terminating the services of the workman with effect from 3-7-2000 is illegal and unjustified.

8. Once the termination of service is held to be illegal and unjustified, the next question that arises is what relief should be awarded to the workman. The normal rule is that the workman is entitled to reinstatement in service with full back wages unless there are valid reasons for not doing so. In the present case there is

no evidence on record to show that the past service record of the workman was not good nor there is any evidence on record to show that the workman was gainfully employed after termination of his service. Therefore as per the normal rule it is just and proper to reinstate the workman in service with full back wages. I, therefore hold that the workman is entitled to reinstatement in service with full back wages. In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Premier Builders, Panaji-Goa, in refusing employment to the workman Shri Haresh G. Kaulekar, Peon, with effect from 3-7-2000 is illegal and unjustified. The workman Shri Haresh G. Kaulekar is ordered to be reinstated in service with full back wages, and all the consequential benefits.

No order as to costs. Inform the Government accordingly.

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 27-3-2002 in reference No. IT/12/2001 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Angela Menezes, Joint Secretary (Labour).

Panaji, 3rd May, 2002.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/12/2001.

Shri P. Sathessa Kurup,
Rep. by Goa Trade & Commercial
Workers' Union,
Panaji - Goa. ...

Workman/Party I

V/s

M/s. Famous Steel Doors Mfg. Co.,
Opp. Chuna Factory, Shop No. 2,
Davorlim, P. O. Navelim,
Margao - Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik

Employer/Party II - Ex-parte.

Panaji, dated : 27-3-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5th January, 2000, bearing No. IRM/CON/SG/22/2000/155 referred the following dispute for adjudication of this Tribunal.

(1) "Whether the action of the management of M/s. Famous Steel Doors Mfg. Co., Davorlim, Navelim, Margao - Goa, in terminating the services of Shri Sathessa Kurup, Welder, with effect from 3-5-99, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

(2) On receipt of the reference a case was registered under No. IT/12/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") as a Welder w.e.f. 8-9-90. That the factory of the employer is situated at Davorlim, Navelim, Margao, Goa and he is engaged in the business of manufacturing Rolling Shutters, Aluminium Sliding Windows, Shutter Gates, Compound Gates, Collapsible Gates, Tempo Shutters etc., and also undertakes all types of fabrication and repair work. That suddenly on 3-5-99 the employer illegally refused employment to him without assigning any justified reasons. That he approached the employer on number of occasions demanding reinstatement in service but the employer refused to do so. That thereafter he raised industrial dispute on 14-7-99 before the Dy. Commissioner of Labour requesting him to intervene in the matter. That the conciliation proceedings held by the Dy. Labour Commissioner ended in failure. The workman contended that the action of the employer in refusing employment to him w.e.f. 3-5-99 is illegal and unjustified and the same is in contravention of Sec. 25F of the Industrial Disputes Act, 1947. The workman contended that after refusal of employment to him the employer has recruited new workers. The workman therefore claimed that he is entitled for reinstatement in service with full back wages.

2. The registered A/D notice issued to the employer was returned unserved with postal remarks "unclaimed". Therefore another notice was sent to the employer under certificate of posting. In spite of the said notice the employer did not appear and therefore the case was proceeded ex-parte against the employer on 16-4-01. The case was fixed for recording ex-parte evidence of the workman. However, the workman filed an application dated 19-7-01 at Exb. 4 praying that he be permitted to file his affidavitory evidence. Since Rule 24 r/w Rule, 10-B (6) of the Industrial Disputes (Central) Rules, 1957, conferred powers on the Tribunal to accept affidavitory evidence of the parties, the workman was permitted to file his affidavitory evidence. Accordingly the workman filed his affidavitory evidence on 29-10-01 at Exb. 5 and he also produced documents along with the affidavit in support of his case.

3. The workman in his evidence stated that he was employed with the employer as a Welder from 8-9-90 initially on monthly salary of Rs. 950/- and that his last drawn salary was Rs. 4500/- p.m. He stated that he was doing the welding work on the items manufactured by the employer such as rolling shutters, aluminium sliders, shutter gates, compound gates, collapsible gates and all other fabrication and repair work undertaken by the employer. He stated that the employer had also employed persons in other categories like cutters, fabricators, turners, fitters etc. He stated that on 3-5-99 the employer without any justified reason suddenly refused employment to him and in spite of several requests made by him to take him back in service the employer did not do so. He stated that he therefore raised an industrial dispute through the union on 26-6-99 and made the demand on the employer and since there was no response from the employer he raised an industrial dispute before the Dy. Labour Commissioner, Margao. He stated that the conciliation proceedings ended in failure. He stated that prior to refusal of employment to him he was not given any notice nor he was paid notice pay nor retrenchment compensation. He stated that refusal of employment to him is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages. The workman produced along with his affidavit his appointment letter at Exb. A; the union's letter dated 25-6-99 requesting the employer to reinstate the workman with full back wages, at Exb. B; union's letter dated 14-7-99 raising dispute about refusal of employment to the workman at Exb. C; notice dated 7-7-99, 26-7-99, 22-12-99, 6-1-2000, 7-2-2000 and 21-2-2002 issued by Dy. Labour Commissioner, Margao to the employer and to the union at Exb. D colly; the letter dated 29-7-99 of the Dy. Labour Commissioner to the union at Exb. E; the letter dated 15-7-99 of the employer to the Dy. Labour Commissioner also at Exb. E; the minutes of the meeting dated 3-11-2000 wherein failure is recorded at Exb. F and the failure report dated 14-11-2000 of the Dy. Labour Commissioner at Exb. G.

4. The employer was given opportunity to participate in the proceedings. The notice sent to the employer by registered A/D post was returned unserved with postal remarks, "Unclaimed". Therefore, another notice was sent to the employer under certificate of posting. In spite of the said notice the employer remained absent and allowed the case to go ex-parte against them. Consequently there is no cross examination to the statement made by the workman in the form of affidavit and hence the evidence of the workman has gone unchallenged. The appointment letter dated 31-8-90 produced by the workman at Exb. A proves that the workman was employed with the employer as a welder from 8-9-90 on salary of Rs. 950/- p.m. This fact is also proved from the letter dated 15-7-99 Exb. E written by the employer to the Dy. Commissioner, Margao. In this letter the employer has stated that the workman did not report for work from 13-2-99. This means that the employer has admitted that the workman was in continuous employment from the date when he joined his duties on 8-9-90 till 12-4-99. Thus the above documents prove the employment of the workman with the employer as a Welder from 8-9-90.

5. The contention of the workman is that the employer refused employment to him from 3-5-99. This refusal of employment amounts to termination of service. From the letter dated 15-7-99 Exb. E written by the employer to the Dy. Labour Commissioner, it can be seen that the defence of the employer in the conciliation proceedings was that the workman was not refused employment but he did not report for work from 13-4-99 as on that day at about 10.00 a.m, he left the place of work without informing anybody and did not report back for duty. Therefore, the defence which the employer took was that of voluntary abandonment of service by the workman from 13-5-99. The Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co. & Others reported in 1996 I CLR 172 has held that the primary onus to lead evidence to prove voluntary abandonment is on the employer. The High Court has held that in the case of voluntary abandonment of service it is the matter of intention which is to be drawn on given set of facts and the employer unilaterally cannot say that the workman is not interested in employment and that for this reason a domestic enquiry is required to be held. The High Court has held that even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. In the case of Mohammed Shah Ganish Patel & another v/s Mastanbaug Consumers Co-op. Wholesale & Retail Stores Ltd., reported in 1998 I CLR 1205, the Bombay High Court has held that it is a settled law that even in the case of abandonment of service the employer has to give notice to the employee calling upon him to resume his duties and if the employee does not turn up despite such notice, the employer should hold enquiry on that ground and then pass appropriate order of termination. The High Court held that at the

time when the employment is scarce, ordinarily abandonment of service by an employee cannot be presumed. In the present case the employer was given opportunity to contest the proceedings. The employer did not claim the notice sent to them by registered A/D post and though a fresh notice was sent under certificate of posting the employer did not participate in the proceedings and allowed the case to proceed ex-parte against them. Therefore there is no evidence before this Tribunal from the employer that notice was given to the workman asking him to resume his duties nor there is any evidence to show that the employer had conducted enquiry against the workman. The burden was on the employer to prove by leading evidence that the workman had abandoned his service. The employer has totally failed to discharge this burden. In the case of Zenith Safe Mfg. Co. & Others (supra) the Bombay High Court has held that if it is a case of word against word, then the benefit should go to the workman and not to the employer. Applying the above principles in the present case, in the absence of any evidence from the employer that the workman abandoned his service from 13-4-99, I do not find any reason to disbelieve the contention of the workman that the employer terminated his services from 3-5-99 by refusing employment to him.

6. Now the next question is whether the termination of service of the workman is illegal and unjustified. The contention of the workman is that the termination is illegal because he was not given any notice nor he was paid notice pay or retrenchment compensation. In short the contention of the workman is that termination of his service amounts to retrenchment. Section 2 (oo) of the Industrial Disputes Act, 1947 defines "Retrenchment".

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted, by way of disciplinary action, but does not include;

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health"

In the present case it has been held by me that the services of the workman were terminated and that it was not the case of voluntary abandonment of service by the workman. There is no evidence that the services of the workman were terminated as a matter of punishment by way of disciplinary action nor the case of the workman falls within the exceptions to Sec. 2 (oo) of the Industrial Disputes Act, 1947. Therefore the termination of service of the workman amounts to retrenchment. Sec. 25 F of the Act lays down that a person who is in continuous service for not less than 1 year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of 6 months. Sec. 25-B (2) of the Industrial Disputes Act defines "continuous service". It states that a person shall be deemed to be in continuous service under an employer for a period of one year. If the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman has stated that he was employed from 8-9-90. The letter of appointment dated 31-8-90 Exb. A support this contention of the workman. The employer in their letter dated 15-7-99 written to the Dy. Labour Commissioner has stated that the workman did not report for work from 13-4-99. This means that the workman worked till 12-4-99. Therefore it is proved that the workman worked for more than 240 days during the period of 12 months preceding the date of termination of his service. Therefore the provisions of Sec. 25F of the Industrial Disputes Act, 1947 apply to the workman. The workman in his affidavit evidence has stated that he was not given one month's notice nor was paid notice pay or retrenchment compensation when his services were terminated. There is no evidence to the contrary from the employer. Therefore the employer has succeeded in proving that the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 at the time when his services were terminated. It is a settled law that complying with the provisions of Sec. 25F in the case of retrenchment is mandatory. The Supreme Court in the case of M/s. Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Hariyana and Others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the provisions prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. The same principles are laid down by the Supreme Court in the case of Gamman India Ltd., v/s Niranjandas reported in 1984 (I) SCC 509. In this case also the Supreme Court has held that in the absence of compliance with the pre-requisites of Sec. 25F the

retrenchment bringing about termination would be void ab-initio. In the present case since one month's notice was not given to the workman nor he was paid wages in lieu of one month's notice nor he was paid retrenchment compensation at the time of termination of service, the action of the employer in terminating the services of the workman w.e.f. 3-5-99 becomes illegal and unjustified. I, therefore hold that the action of the employer in terminating the service of the workman w.e.f. 3-5-99 is illegal and unjustified.

7. It has been held by me that the termination of service of the workman is illegal and unjustified. Now, the question is what relief should be granted to the workman. The normal rule is that once the termination is held to be illegal and unjustified, the workman is entitled to reinstatement in service with full back wages unless there are valid reasons for not doing so. In the present case there is no evidence to show that the past record of the workman was not good nor there is any evidence to show that the workman was gainfully employed after termination of his service. However, the workman himself has produced the letter dated 15-7-99 at Exb. E written by the employer to the Dy. Labour Commissioner. In this letter the employer gave offer to the workman that if he is interested in the job he should report back for duty immediately and even from the next date. As per the letter dated 29-7-99 Exb. E written by the Dy. Labour Commissioner to the Union, the copy of the said letter dated 15-7-99 was given to the union for their comment and also the workman was asked to report for duties immediately and to inform the office of the Dy. Labour Commissioner accordingly. The workman has admitted in para. 7 of his affidavit that he was given the offer of employment by the employer and that he told the Dy. Labour Commissioner that he should be paid all his back wages from 3-5-99 till the date of re-employment and that since the employer remains absent no settlement could be arrived at. In the failure report dated 14-11-2000 Exb. G it has been recorded that the union representative stated that the workman is prepared to report for work if he is paid wages for the intervening period i.e.

from 3-5-99 to the date of joining the service. In my view, the union/workman was wrong in refusing to accept the offer of employment given by the employer and much so at the time when the employment is scarce. The workman could have very well accepted reinstatement before the Dy. Labour Commissioner i.e., the Conciliation Officer and prayed for referring the dispute for adjudication as regards the entitlement of his back wages. In my view the conduct of the union/workman was totally unreasonable in refusing to accept the offer of reinstatement given by the employer. In the circumstances, it would be just and proper to reinstate the workman in service but without any wages from 1-8-99 as before this date the union who was representing the workman had refused the offer of reinstatement from employer. I, therefore hold that the workman is entitled to reinstatement in service but without back wages from 1-8-99 till the date of the award. The workman shall be entitled to back wages from 3-5-99 to 31-7-99. In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Famous Steel Doors Mfg. Co., Davorlim, Navelim, Margao-Goa, in terminating the services of workman Shri P. Sathessa Kurup, Welder, with effect from 3-5-99 is illegal and unjustified. The workman Shri P. Sathessa Kurup is ordered to be reinstated in service without back wages from 1-8-99 till the date of the Award. However, he will be entitled to full back wages from 3-5-99 till 31-7-99.

No order as to costs. Inform the Government accordingly.

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.